

1 SENATE BILL NO. 257

2 INTRODUCED BY COONEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING ADDITIONAL NOTICE OF TIME DEADLINES TO THE
5 COURT IN CHILD ABUSE AND NEGLECT PROCEEDINGS; AND AMENDING SECTIONS 41-3-422 AND
6 41-3-432, MCA."

7

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

10 **Section 1.** Section 41-3-422, MCA, is amended to read:

11 **"41-3-422. Abuse and neglect petitions -- burden of proof.** (1) (a) Proceedings under this chapter
12 must be initiated by the filing of a petition. A petition may request the following relief:

13 (i) immediate protection and emergency protective services, as provided in 41-3-427;

14 (ii) temporary investigative authority, as provided in 41-3-433;

15 (iii) temporary legal custody, as provided in 41-3-442;

16 (iv) termination of the parent-child legal relationship, as provided in 41-3-607;

17 (v) appointment of a guardian pursuant to 41-3-444;

18 (vi) a determination that preservation or reunification services need not be provided; or

19 (vii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vi) or any other relief that
20 may be required for the best interests of the child.

21 (b) The petition may be modified for different relief at any time within the discretion of the court.

22 (c) A petition for temporary legal custody may be the initial petition filed in a case.

23 (d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in
24 a case if a request for a determination that preservation or reunification services need not be provided is made
25 in the petition.

26 (2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under
27 this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be
28 accompanied by:

29 (a) an affidavit by the department alleging that the child appears to have been abused or neglected and
30 stating the basis for the petition; and

1 **(b) a separate notice to the court stating any statutory time deadline for a hearing.**

2 (3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

3 (4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The
4 Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter.
5 Proceedings under a petition are not a bar to criminal prosecution.

6 (5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the
7 burden of presenting evidence required to justify the relief requested and establishing:

8 (i) probable cause for the issuance of an order for immediate protection and emergency protective
9 services or an order for temporary investigative authority;

10 (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody; or

11 (iii) clear and convincing evidence for an order terminating the parent-child legal relationship.

12 (b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child
13 Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian
14 Child Welfare Act apply.

15 (6) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent,
16 guardian, or other person or agency having legal custody of the child named in the petition, if residing in the
17 state, must be served personally with a copy of all petitions at least 5 days before the date set for hearing. If the
18 person or agency cannot be served personally, the person or agency may be served by publication as provided
19 in 41-3-428 and 41-3-429.

20 (7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency
21 having legal custody, the court shall appoint an attorney to represent the unavailable party when, in the opinion
22 of the court, the interests of justice require.

23 (8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian,
24 and if there is no guardian, the court shall appoint one.

25 (9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent,
26 preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition
27 of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be
28 heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring
29 for the child must be given notice of all reviews by the reviewing body.

30 (b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child

1 who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section
2 may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented
3 on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best
4 interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the
5 adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held
6 pursuant to this chapter involving the custody of the child.

7 (10) An abuse and neglect petition must:

8 (a) state the nature of the alleged abuse or neglect and of the relief requested;

9 (b) state the full name, age, and address of the child and the name and address of the child's parents
10 or guardian or person having legal custody of the child;

11 (c) state the names, addresses, and relationship to the child of all persons who are necessary parties
12 to the action.

13 (11) The court may at any time on its own motion or the motion of any party appoint counsel for any
14 indigent party. If an indigent parent is not already represented by counsel, counsel must be appointed for an
15 indigent parent at the time that a request is made for a determination that preservation or reunification services
16 need not be provided.

17 (12) At any stage of the proceedings considered appropriate by the court, the court may order an
18 alternative dispute resolution proceeding or the parties may voluntarily participate in an alternative dispute
19 resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family
20 group conference, mediation, or a settlement conference. If a court orders an alternative dispute resolution
21 proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department
22 is a party to the original proceeding, a representative of the department who has complete authority to settle the
23 issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

24 (13) Service of a petition under this section must be accompanied by a written notice advising the child's
25 parent, guardian, or other person having physical or legal custody of the child of the:

26 (a) right to request the appointment of counsel if the person is indigent or if appointment of counsel is
27 required under the federal Indian Child Welfare Act, if applicable;

28 (b) right to contest the allegations in the petition; and

29 (c) timelines for hearings and determinations required under this chapter.

30 (14) Orders issued under this chapter must contain a notice provision advising a child's parent, guardian,

1 or other person having physical or legal custody of the child that:

2 (a) the court is required by federal and state laws to hold a permanency hearing to determine the
3 permanent placement of a child no later than 12 months after a judge determines that the child has been abused
4 or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

5 (b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination
6 of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental
7 rights; and

8 (c) completion of a treatment plan does not guarantee the return of a child.

9 (15) A court may appoint a standing master to conduct hearings and propose decisions and orders to
10 the court for court consideration and action. A standing master may not conduct a proceeding to terminate
11 parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable
12 in the area of child abuse and neglect laws."

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14 **Section 2.** Section 41-3-432, MCA, is amended to read:

15 **"41-3-432. Show cause hearing -- order.** (1) (a) A show cause hearing must be conducted within 10
16 days, excluding weekends and holidays, of the filing of an initial child abuse and neglect petition unless
17 otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court.
18 A separate notice to the court of the 10-day STATING THE STATUTORY TIME DEADLINE FOR A hearing requirement
19 must accompany any petition to which the requirement TIME DEADLINE applies.

20 (b) The court may grant an extension of time for a show cause hearing only upon a showing of
21 substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

22 (2) The person filing the petition has the burden of presenting evidence establishing probable cause
23 for the issuance of an order for temporary investigative authority after the show cause hearing, except as
24 provided by the federal Indian Child Welfare Act, if applicable.

25 (3) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for
26 a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay
27 evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other
28 person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means,
29 or other electronic means.

30 (4) At the show cause hearing, the court shall explain the procedures to be followed in the case and

1 explain the parties' rights, including the right to request appointment of counsel if indigent or if appointment of
2 counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the
3 allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of
4 the child must be given the opportunity to admit or deny the allegations contained in the petition at the show
5 cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child
6 Welfare Act, if applicable, have been met.

7 (5) The court shall make written findings on issues including but not limited to the following:

8 (a) whether the child should be returned home immediately if there has been an emergency removal
9 or remain in temporary out-of-home care or be removed from the home;

10 (b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home
11 would be contrary to the child's best interests and welfare;

12 (c) whether the department has made reasonable efforts to avoid protective placement of the child or
13 to make it possible to safely return the child to the child's home;

14 (d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or
15 other person having physical or legal custody of the child to contribute to the costs for the care, custody, and
16 treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

17 (e) whether another hearing is needed and, if so, the date and time of the next hearing.

18 (6) The court may consider:

19 (a) terms and conditions for parental visitation; and

20 (b) whether orders for examinations, evaluations, counseling, immediate services, or protection are
21 needed.

22 (7) Following the show cause hearing, the court may enter an order for the relief requested or amend
23 a previous order for immediate protection of the child if one has been entered. The order must be in writing.

24 (8) If a child who has been removed from the child's home is not returned home after the show cause
25 hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or
26 legal custody of the child named in the petition may request that a citizen review board, if available pursuant to
27 part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation
28 to the district court, as provided in 41-3-1010.

29 (9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the
30 requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must

1 be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties
2 pursuant to 41-3-434 and order of the court."

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